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11 GOOGLE LLC

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15  
16 MISAELE AMBRIZ, JIMMY NIMMO,  
CHRISTOPHER BISSONNETTE, AHMAD  
MEHDIPOUR, EUGENE ERLIKH, JAMES  
FOX, and PETER SAMISH, individually and  
18 on behalf of all other persons similarly situated,

19 Plaintiffs,

20 v.

21 GOOGLE LLC,

22 Defendant.

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Case No. 3:23-cv-05437-RFL

**JOINT ADMINISTRATIVE MOTION  
TO (1) CONSIDER WHETHER CASES  
SHOULD BE RELATED AND (2)  
CONSOLIDATE CASES**

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 42(a)(2) and  
26 Civil Local Rules 3-12(b) and 7-11 of the United States District Court for the Northern District of  
27 California, Defendant Google LLC (“Google”) and all Plaintiffs jointly submit this Administrative  
28 Motion to (1) Consider Whether Cases Should be Related and (2) Consolidate Cases.

1     **I. INTRODUCTION**

2         The *Ambriz* and *Barulich* cases are putative class actions brought against a sole defendant,  
 3 Google, for alleged violations of the California Invasion of Privacy Act (“CIPA”), California Penal  
 4 Code § 630, *et seq.*, related to the operation of one of Google’s customer service products, the  
 5 Google Cloud Contact Center AI (“CCAI”). *See* First Am. Class Action Compl. (“*Ambriz* FAC”),  
 6 *Ambriz v. Google, LLC* (“*Ambriz*”), No. 23-cv-05437-RFL (N.D. Cal.), ECF No. 39; Class Action  
 7 Compl. (“*Barulich* Compl.”), *Barulich v. Google, LLC* (“*Barulich*”), No. 24-cv-06225-AMO (N.D.  
 8 Cal.), ECF No. 1. The *Barulich* case was originally filed in the Central District but, following a  
 9 motion to transfer by Google, it was voluntarily dismissed by Plaintiff and re-filed in the Northern  
 10 District. Decl. of Kristine Forderer (“Forderer Decl.”) ¶¶ 3–5. Google notified this Court of the  
 11 *Barulich* case in March 2024, and the Parties previewed that they anticipated seeking consolidation  
 12 once *Barulich* was transferred to the Northern District in July 2024. *See* ECF Nos. 31, 40.

13         As described below, these cases are related because they concern substantially the same  
 14 parties and events and there would be both undue duplication of labor and expense and high  
 15 potential for conflicting results should the cases be conducted before two courts in this district. The  
 16 cases are suitable for consolidation for these same reasons, and because they involve common  
 17 questions of both law and fact as to whether use of Google’s CCAI product violates CIPA.

18     **II. RELEVANT BACKGROUND**

19         Plaintiff Misael Ambriz initiated the *Ambriz* action against Google on October 23, 2023.  
 20 ECF No. 1. Google moved to dismiss and that motion was granted with leave to amend. ECF Nos.  
 21 28, 37. The operative *Ambriz* FAC was filed on July 22, 2024, adding new named Plaintiffs and  
 22 asserting counts for violation of § 631(a) and § 637.5 of the California Penal Code on behalf of a  
 23 putative class. *See* *Ambriz* FAC ¶¶ 108–29. The *Ambriz* Plaintiffs allege they called the customer  
 24 service contact centers of four companies—Verizon, Hulu, GoDaddy, and Home Depot—and that  
 25 those companies’ use of CCAI results in Google’s illegal wiretap of the Plaintiffs’ conversations in  
 26 violation of CIPA. *See id.* ¶¶ 33–40. Google’s current deadline to respond to the *Ambriz* FAC is  
 27 October 22, 2024. ECF No. 41.

28         On September 3, 2024, Plaintiff Christopher Barulich filed the *Barulich* putative class

1 action against Google. *See Barulich* Compl., No. 24-cv-06225-AMO (N.D. Cal.), ECF No. 1. The  
 2 *Barulich* Complaint asserts one count for violation of § 631(a) of the California Penal Code. *See*  
 3 *id.* ¶¶ 51–60. Barulich alleges that he made customer service calls to Home Depot, that Home  
 4 Depot uses CCAI, and that Google is therefore liable for wiretapping in violation of CIPA. *See id.*  
 5 ¶¶ 23–34. Google executed a waiver of service and the current deadline for Google to respond to  
 6 the Barulich complaint is November 8, 2024. ECF No. 8; *see also* Forderer Decl. ¶ 7.

7 Google has conferred with counsel for both the *Ambriz* Plaintiffs and the *Barulich* Plaintiff.  
 8 *See* Forderer Decl. ¶ 8. The Parties agree the actions should be related and consolidated, and the  
 9 Parties now jointly make this administrative motion for an order relating and consolidating the  
 10 *Ambriz* and *Barulich* cases.

### 11 III. THE *AMBRIZ* AND *BARULICH* CASES ARE RELATED

12 The *Ambriz* and *Barulich* cases meet both prongs of the definition of related cases, *i.e.*, “(1)  
 13 [t]he actions concern substantially the same parties, property, transaction, or event; and (2) [i]t  
 14 appears likely that there will be an unduly burdensome duplication of labor and expense or  
 15 conflicting results if the cases are conducted before different Judges.” Civil L.R. 3-12(a). The  
 16 *Barulich* Complaint was marked as “related” to *Ambriz* at the time of filing. *See Barulich*, No. 24-  
 17 cv-06225-AMO (N.D. Cal.), ECF No. 1-1.

#### 18 A. The Cases Concern Substantially the Same Parties and Events

19 Google is the sole defendant in both the *Ambriz* and *Barulich* matters. And although the  
 20 single named plaintiff in *Barulich* is not one of the seven named Plaintiffs in *Ambriz*, the *Ambriz*  
 21 Plaintiffs and the *Barulich* Plaintiff all seek to bring these actions on behalf of California residents  
 22 who called customer service phone numbers of companies who allegedly use Google’s CCAI  
 23 product. *See Ambriz* FAC ¶¶ 97–102; *Barulich* Compl. ¶¶ 42–43. Further, the sole putative class  
 24 in *Barulich* is limited to individuals who made phone calls to Home Depot’s customer service  
 25 department, *see Barulich* Compl. ¶ 42, and is thus a subset of the putative class in *Ambriz*, which  
 26 includes individuals who made phone calls to the customer service lines of Home Depot, as well  
 27 as Verizon, Hulu, and GoDaddy, *see Ambriz* FAC ¶ 97–101. And because the cases both arise out  
 28 of the alleged use of Google’s CCAI product for the customer service calls, the underlying events—

1      *i.e.*, the manner in which the calls were conducted—are substantially the same.

2            **B. Separate Cases Would be Unduly Duplicative for Parties and Court**

3      Leaving the *Ambriz* and *Barulich* matters separate is likely to lead to near-identical  
 4      processes before two different Courts in this District. Should the cases proceed beyond any  
 5      challenges Google raises to the operative complaints and reach the class certification stage, the  
 6      plaintiffs in the two cases would seek to certify essentially the same class, particularly with respect  
 7      to individuals who called Home Depot’s customer service department. Discovery would likewise  
 8      be inefficient and costly, as the substantial similarity of the underlying events and the CCAI product  
 9      would likely lead to duplicative discovery requests, responses, and depositions, which would in  
 10     turn lead to the litigation of similar material facts in any summary judgment briefing. These  
 11     inefficiencies affect not only the parties but the resources of the District as a whole by requiring  
 12     this Court and Judge Martínez-Olguín to preside over nearly identical cases. Further, given the  
 13     myriad points of inflection in the lifecycle of a case, it “appears likely that there will be . . .  
 14     conflicting results if the cases are conducted before different Judges.” Civil L.R. 3-12(a)(2).

15            **IV. CONSOLIDATION OF *AMBRIZ* AND *BARULICH* IS APPROPRIATE**

16      Federal Rule of Civil Procedure 42 provides that the Court may consolidate actions that  
 17     “involve a common question of law or fact.” Fed. R. Civ. P. 42(a)(2). District courts have broad  
 18     discretion under this rule to consolidate cases pending in the same district. *Investors Research Co.*  
 19     *v. U.S. Dist. Court for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). In evaluating whether  
 20     cases are suitable for consolidation, courts in this District “weigh[] the interest of judicial  
 21     convenience against the potential for delay, confusion and prejudice.” *Hessefort v. Super Micro*  
 22     *Comp., Inc.*, 317 F. Supp. 3d 1056, 1060 (N.D. Cal. 2018) (quoting *Zhu v. UCBH Holdings, Inc.*,  
 23     682 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010)). District courts throughout California have found  
 24     CIPA class actions suitable for consolidation. *See, e.g., In re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016,  
 25     1020 (N.D. Cal. 2014) (noting consolidated status of class actions raising CIPA and other privacy  
 26     claims in order on motion to dismiss); *Cousin v. Sharp HealthCare*, Nos. 22-cv-2040-MMA  
 27     (DDL), 23-cv-33-MMA (DDL), 2023 WL 1421556, at \*1–2 (S.D. Cal. Jan. 31, 2023) (granting  
 28     parties’ joint motion to consolidate class actions alleging CIPA violations).

1       Here, there is a weighty interest of judicial convenience. As described above, *see supra*, at  
 2 Part III, the *Ambriz* and *Barulich* cases include overlapping claims against the same defendant  
 3 based on the same CCAI product. The cases share both a common factual background and common  
 4 questions of law: both actions assert CIPA violations based on California Penal Code § 631(a),  
 5 and the *Ambriz* action additionally asserts violations of California Penal Code § 637.5. *See*  
 6 *Barulich* Compl. ¶¶ 51–60; *Ambriz* FAC ¶¶ 108–29. Addressing the common § 631(a) allegations  
 7 would involve the same legal questions, including whether Google eavesdrops on customer service  
 8 calls via CCAI, whether CCAI is analogous to a tape recorder, whether Google is a third party to  
 9 customer service communications that use CCAI, and whether the alleged interception is “in  
 10 transit.” *Compare Ambriz* FAC ¶¶ 21, 35, 115, with *Barulich* Compl. ¶¶ 38–41, 56.

11       Prejudice, delay, and confusion do not weigh against the interest of judicial convenience.  
 12 There is no prejudice because Plaintiffs in both matters do not oppose consolidation. *See* Forderer  
 13 Decl. ¶ 8. There is no risk of confusion or delay because Plaintiffs in both cases share the same  
 14 counsel, Burson & Fisher, P.A., and would be prepared to file a consolidated amended complaint  
 15 within 14 days of any order consolidating these cases. *See* Forderer Decl. ¶ 9. Accordingly, Google  
 16 submits that the relevant factors favor consolidation of the *Ambriz* and *Barulich* actions.

## 17       V. CASE SCHEDULE IN THE EVENT OF CONSOLIDATION

18       The current deadline for Google to respond to the *Ambriz* FAC is October 22, 2024 and the  
 19 current deadline for Google to respond to the *Barulich* Complaint is November 8, 2024. *See* ECF  
 20 No. 41. If the matter is consolidated, counsel for the *Ambriz* Plaintiff and counsel for the *Barulich*  
 21 Plaintiffs propose to file a consolidated complaint within 14 days of the consolidation order.  
 22 Forderer Decl. ¶ 9. The Parties agree, subject to Court approval, that Google will have 35 days  
 23 after the consolidated amended complaint is filed to respond. *Id.* ¶ 10.

## 24       VI. CONCLUSION

25       For the foregoing reasons, the Parties respectfully request that the Court grant their joint the  
 26 administrative motion and issue an order relating and consolidating the *Ambriz* and *Barulich*  
 27 matters, and set the schedule agreed by the Parties for the filing and response to Plaintiffs’  
 28 consolidated amended complaint.

1 Dated: September 26, 2024

COOLEY LLP

3 By: /s/ Kristine A. Forderer  
4 Kristine A. Forderer

5 Attorney for Defendant  
6 GOOGLE LLC

7 Dated: September 26, 2024

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**CIVIL L.R. 5-1(i)(3) ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I, Kristine A. Forderer, hereby attest under penalty of perjury that concurrence in the filing of this document has been obtained from all signatories.

Dated: September 26, 2024

COOLEY LLP

By: /s/ Kristine A. Forderer  
Kristine A. Forderer

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